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No. 91-1353

In the Supreme Court of the United States

OCTOBER TERM, 1991

THOMAS F. CONROY, PETITIONER

v.

WALTER S. ANISKOFF, JR., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 525, excludes a service member's period of military service after October 6, 1942, from the computation of "any period * * * provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." The question presented is whether a service member may invoke the protections of Section 525 without showing that his military service prejudiced his ability to redeem his property within the period otherwise prescribed by state law.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATUTORY PROVISION INVOLVED

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 525, provides as follows:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided

by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.[1]

STATEMENT

1. Petitioner, a Colonel in the United States Army, has been on continuous active duty with the Army since November 26, 1966. During that time, petitioner has been stationed in four foreign countries and several duty stations in the United States. While stationed in Massachusetts in 1973, petitioner purchased real estate in Danforth, Maine. Petitioner paid all local real estate taxes on the property until 1984, but he did not do so in 1984, 1985, or 1986.[2] Although the town sent petitioner tax notices, they were returned as "undeliverable as addressed and unable to forward." Pet. App. 24-28.

By operation of Maine law, a lien against real estate arises to secure the payment of taxes legally assessed against the real estate. Maine Rev. Stat. Ann. tit. 36, § 552 (West 1990). After a specified period, the tax collector may send the taxpayer a notice of lien and a demand for payment. Maine Rev. Stat. Ann. tit. 36, § 942 (West 1990). If taxes remain unpaid after an additional 30 days, the tax collector records a "tax lien certificate" in the county registry of deeds. *Ibid.* Recordation of the certificate creates a tax lien mortgage, and the tax-

[1] On March 18, 1991, Congress amended 50 U.S.C. App. 525 to replace a reference to "the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942" with the present reference to "October 6, 1942." Soldiers' and Sailors' Relief Act Amendments of 1991, Pub. L. No. 102-12, § 9(6), 105 Stat. 39. That technical amendment does not affect the question presented in this case. For purposes of convenience, we refer to the present version of Section 525 throughout.

[2] Petitioner testified that he never received tax bills for those years, that he sent the municipality correspondence in 1985 concerning his 1984 and 1985 bills, and that he ceased to pursue the matter when he received no response before he moved overseas the next year. Pet. App. 26-27.

payer has a period of redemption of 18 months before the mortgage is automatically foreclosed after notice to the taxpayer. Maine Rev. Stat. tit. 36, § 943 (West 1990).

Here, the town sent petitioner notices of the tax liens and of the impending foreclosure of those liens, but the notices were returned as undeliverable. Pet. App. 28. After the automatic foreclosure, the town sold petitioner's properties to respondents Walter S. Aniskoff, Jr. and H.C. Haynes, Inc., in December 1986. *Id.* at 27-28. At trial, the parties stipulated:

> [A]ll statutory proceedings allowing the Town to acquire property for non-payment of taxes were properly followed in this particular instance, including notice and recording requirements; and * * * were it not for the Soldiers' and Sailors' Civil Relief Act, the Town title would have been perfected in this particular instance.

Id. at 28-29.

2. Petitioner brought this quiet title action against the town and the two purchasers in the Maine Superior Court. Noting that 50 U.S.C. App. 525 tolls statutory redemption periods for any "period of military service," petitioner argued that the town did not acquire valid title to his property because he had been in military service throughout the relevant period. The superior court rejected that contention.

The trial court acknowledged decisions holding that under 50 U.S.C. App. 525 any period of military service tolls any period of limitations, and explained that those decisions were based on the principle that a court should apply the plain meaning of a clearly worded statute. Pet. App. 32-33. The court, however, also noted that some courts had concluded that a career service member may invoke Section 525 only if he can show that his military service resulted in hardship excusing timely legal action. Pet. App. 33-34. Those courts, the court observed, had rejected the contrary rule—requiring no showing of hard-

ship by career service members—as "absurd and illogical." *Id.* at 34.

The superior court followed the line of cases requiring a showing of hardship. The court found reading such a requirement into the statute necessary to avoid "absurd, unreasonable or illogical results." Pet. App. 36. If a career officer did not have to demonstrate prejudice, the court reasoned, he could purchase real estate, ignore his tax obligations for a lengthy period, and reclaim the property at the end of his military service. *Id.* at 37-39. Finding that petitioner was a career service member who had not alleged any hardship, the court denied him relief under Section 525. Pet. App. 40.

3. The Maine Supreme Judicial Court affirmed by an evenly divided court. Pet. App. 42-45.

DISCUSSION

The state court's decision requiring a career service member to show hardship before invoking the redemption provision of 50 U.S.C. App. 525 is contrary to the unambiguous and unqualified language of the statute. The state court's analysis, moreover, is inconsistent with this Court's approach to construing Section 525, see *Le Maistre* v. *Leffers*, 333 U.S. 1 (1948), as well as another statute protecting service members, the Veterans' Reemployment Rights Act, see *King* v. *St. Vincent's Hosp.*, 112 S. Ct. 570 (1991). Finally, there is a conflict among the circuits and state supreme courts concerning whether Section 525 requires a showing of prejudice. Because Section 525 applies broadly, and the issue is recurring, we believe further review is warranted to resolve the conflict in authority.

1. Congress enacted the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), ch. 888, 54 Stat. 1178, "to provide for, strengthen, and expedite the national defense" and "to enable the United States more successfully to fulfill the requirements of the national defense." 50

U.S.C. App. 510.[3] The Act achieves its objective by "suspend[ing] enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation." *Ibid.* Although the immediate rationale for enacting the SSCRA was to address "the emergent conditions which [were] threatening the peace and security of the United States," *ibid.*, and the Act was originally to be of limited duration, § 604, 54 Stat. 1191, Congress later extended its protections indefinitely. Selective Service Act of 1948, ch. 625, § 14, 62 Stat. 623.

The provision at issue here, 50 U.S.C. App. 525, tolls periods of limitation and redemption during a service member's military service. The broad and unconditional language of that provision mandates that "[t]he period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service." 50 U.S.C. App. 525. Of specific pertinence here, Section 525 also provides: "[N]or shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." *Ibid.*[4]

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[3] Congress had enacted a substantially similar law in 1918. Soldiers' and Sailors' Civil Relief Act, ch. 20, 40 Stat. 440.

[4] The portion of Section 525 pertaining to redemption periods was enacted in 1942. See Soldiers' and Sailors' Civil Relief Act Amendments of 1942, ch. 581, § 5, 56 Stat. 769-771. In *Ebert* v. *Poston*, 266 U.S. 548, 553 (1925), this Court had determined that an analogous tolling provision in the previous Soldiers' and Sailors Civil Relief Act did not apply to rights of redemption, and Congress amended the 1940 statute to overcome the effect of that interpretation. See H.R. Rep. No. 2198, 77th Cong., 2d Sess. 3-4 (1942); S. Rep. No. 1558, 77th Cong., 2d Sess. 3 (1942).

a. As this Court has often stated, "[i]nterpretation of a statute must begin with the statute's language." *Mallard* v. *United States District Court for the Southern District of Iowa*, 490 U.S. 296, 300 (1989); see, *e.g.*, *Hallstrom* v. *Tillamook County*, 493 U.S. 20, 25 (1989); *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). And where "the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989), quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917). The plain language of Section 525 requires no showing of prejudice or hardship by a career officer or anyone else. Section 525 flatly excludes "any part of [the] period [of military service] which occurs after October 6, 1942," from "any period" for the redemption of real estate. Thus, under the clear terms of Section 525, "[t]he only critical factor is military service; once that circumstance is shown, the period of limitations is automatically tolled for the duration of the service." *Ricard* v. *Birch*, 529 F.2d 214, 217 (4th Cir. 1975); accord *Bickford* v. *United States*, 656 F.2d 636, 639 (Ct. Cl. 1981).[5]

The SSCRA, moreover, explicitly defines both the type and the duration of military service that qualifies for protection. The category of "person[s] in the military service" encompasses "[a]ll members of the Army of the United States, the United States Navy, the Marine Corps, the Air Force, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy." 50 U.S.C. App. 511(1). And the statute defines "period of military service" to

[5] Although *Bickford* and *Ricard* involved periods of limitation, and not periods of redemption, their reasoning applies with no less force to the part of Section 525 dealing with redemption. Section 525 generally excludes "[t]he period of military service" from any limitations period, but also excludes "any part of such period [of military service] which occurs after October 6, 1942," from periods of redemption.

"mean[], in the case of any person, the period beginning on the date on which the person enters active service and ending on the date of the person's release from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force." 50 U.S.C. App. 511(2).[6]

Thus, contrary to the state court's decision, Pet. App. 40, the statute "draws no distinction" among "different categories of active duty personnel." *Bickford*, 656 F.2d at 639. Section 525 on its face applies equally to "*any* person in military service," a category into which Section 511 places "[*a*]*ll* members" of the Armed Forces. Indeed, the statute does not even suggest any criteria for determining who would be a career, rather than noncareer, service member for purposes of Section 525.[7] It is unlikely

[6] Prior to the 1991 amendments to the SSCRA, the statute provided:

> The term "period of military service", as used in this Act [said sections], shall include the time between the following dates: For persons in active service at the date of the approval of this Act [Oct. 17, 1940] it shall begin with the date of approval of this Act [Oct. 17, 1940]; for persons entering active service after the date of this Act [Oct. 17, 1940], with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force.

50 U.S.C. App. 511(2) (1988). Because petitioner entered active service well after the approval of the SSCRA, the omission of the transitional provisions relating to the 1940 enactment of the SSCRA has no effect on this lawsuit. For simplicity, we refer to the presently effective version of Section 511(2).

[7] Although courts have cited length of service as a factor to consider in determining a service member's "career" status, see, *e.g.*, *Pannell* v. *Continental Can Co.*, 554 F.2d 216, 224-225 (5th Cir. 1977) (31 years); *King* v. *Zagorski*, 207 So. 2d 61, 62, 64 (Fla. Dist. Ct. App. 1968) (20 years), nothing in the Act indicates how or where a line is to be drawn between career and noncareer members based on their length of service. We do not believe that the *ad hoc* determinations required by a "length of service" test are

that Congress, in enacting so detailed a statute, would have created two classes of tolling rights for service members without specifying any basis for identifying the members of each category. There is, in particular, no basis for assuming that Congress, which traditionally has sought to attract volunteers and to encourage reenlistments (*e.g.*, by payment of reenlistment bonuses), meant to treat either of those categories less favorably than others under Section 525.

Nor is it plausible to suggest that Congress intended to require a showing of prejudice. Not only does Section 525 unconditionally exclude the period of military service from "any period" of redemption,[8] but it stands in marked contrast with other provisions of the Act that expressly condition available relief on prejudice arising from military service. For example, a court may stay "any action or proceeding in any court in which a person in military

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consistent with the plain and unconditional language of Section 525. Nor is it tenable to suggest, as some courts have, see, *e.g.*, *Pannell*, 554 F.2d at 225; *Bailey* v. *Barranca*, 488 P.2d 725, 727-729 (N.M. 1971), that Section 525's availability turns on the member's status as a conscript, rather than a volunteer. To be sure, the SSCRA was enacted in 1940 to deal with the "emergent conditions which [were] threatening the peace and security of the United States," and Congress contemplated that it would be of limited duration. 50 U.S.C. App. 510; 54 Stat. 1179, 1191. But the language of the SSCRA does not differentiate between conscripts and volunteers. Indeed, in 1940 the Selective Service Act already provided some protection for conscripts, and part of the impetus for enacting the SSCRA was to afford relief to volunteers. S. Rep. No. 2109, 76th Cong., 3d Sess. 1 (1940). And Congress has extended the SSCRA indefinitely, 62 Stat. 623-624, making clear that the Act's protections are fully intended for service members who serve other than in periods of emergency or war. In any case, given the present all-volunteer character of the Armed Forces, a distinction turning on conscription versus voluntary enlistment is meaningless.

[8] See, *e.g.*, *Mason* v. *Texaco Inc.*, 862 F.2d 242, 245 (10th Cir. 1988) (Section 525's terms are "clear and unambiguous"); *Bickford*, 656 F.2d at 639 (statute's "express terms" make tolling "unconditional"); *Ricard*, 529 F.2d at 217 (tolling statute is "unconditional").

service is involved, either as plaintiff or defendant, * * * unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service." 50 U.S.C. App. 521. A similar qualification appears in many other provisions of the SSCRA relating to diverse forms of civil relief.[9] The absence of any similar

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[9] See 50 U.S.C. App. 520(4) (court may reopen judgment entered against absent service member if "it appears that such person was prejudiced by reason of his military service in making his defense thereto"); 50 U.S.C. App. 523 (court may enter stay of judgment, attachment, or garnishment against service member, "unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service"); 50 U.S.C. App. 526 (limiting interest rate on obligations incurred before entry into military service unless service member's ability to pay "is not materially affected by reason of such service"); 50 U.S.C. App. 530(2) (allowing stay of eviction or distress proceedings against military dependents unless tenant's ability to pay rent "is not materially affected by reason of such military service"); 50 U.S.C. App. 531(3) (allowing stay of eviction or distress proceedings against military dependents "the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service"); 50 U.S.C. App. 532(2) (stay of enforcement of secured obligations, unless "the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service"); 50 U.S.C. App. 535(1) (limiting right of assignee of insurance policy to exercise any right or option under the policy, unless "the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his military service"); 50 U.S.C. App. 535(2) (limiting right to foreclose or enforce lien for storage of personal property unless "the ability of the defendant to pay the storage charges due is not materially affected by reason of his military service").

In addition, the National Labor Relations Act establishes a six-month limitations period for filing an unfair labor practice charge, unless the aggrieved person "was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge." 29 U.S.C. 160(b). That provision confirms that when Congress intends to toll a statute of limitations based on the prejudicial effect

qualification upon the tolling of redemption under Section 525 indicates that Congress did not intend to qualify the availability of that relief. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citation omitted).

Other parts of the Act confirm that conclusion. The SSCRA deals directly with the collection of unpaid taxes and assesments on "real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees." 50 U.S.C. App. 560(1).[10] The Act provides that such property may not be sold to collect unpaid taxes or assessments except by leave of court, and that collection proceedings may be stayed until six months after the termination of military service—"unless * * * the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service." 50 U.S.C. App. 560 (2). When such property is sold for back taxes or assess-

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of military service on a service member's ability to bring an action, it does so explicitly.

[10] The state court did not consider, and petitioner does not rely on, that provision in this case. Nor does petitioner suggest that he or his dependents ever used the property in question for "dwelling, professional, business, or agricultural purposes," as required by Section 560. As this Court has noted, however, the fact that property is not within the ambit of Section 560 does not affect the applicability of Section 525. *Le Maistre* v. *Leffers*, 333 U.S. at 5. The two provisions supplement each other; Section 560 provides protections relating to both the forced sale and redemption of the specified kinds of property, whereas Section 525 applies generally to all property but protects only against expiration of the right of redemption. 333 U.S. at 5-6.

ments, however, the SSCRA provides, without qualification, that a service member "shall have the right to reedeem or commence an action to redeem such property, at any time not later than six months after the termination of [military] service." 50 U.S.C. App. 560(3). Thus, two provisions appearing side-by-side in the same section of the SSCRA differ as to whether prejudice is required; the subsection dealing with collection proceedings requires consideration of prejudice while the adjacent subsection dealing with the right of redemption pointedly omits such a requirement. This is powerful confirmation that Congress intended to make the right of redemption unqualified in the SSCRA.

The inference that Congress purposefully omitted a prejudice requirement from the redemption provision is generally reinforced by the carefully detailed character of the SSCRA's remedial scheme. As this Court observed of a substantially similar version of the SSCRA enacted during World War I:[11]

> This Act is so carefully drawn as to leave little room for conjecture. It deals with a single subject and does so comprehensively, systematically, and in detail. * * * To ensure certainty, separate provision is made for each of the several classes of transactions to be dealt with and for the situations likely to arise in each. * * * Such care and particularity in treatment preclude expansion of the Act in order to include transactions supposed to be within its spirit, but which do not fall within any of its provisions.

Ebert v. *Poston*, 266 U.S. 548, 554 (1925). Although the Court made that observation in rejecting a remedy found nowhere in the statutory text,[12] there is no reason to con-

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[11] "The Act of 1940 was a substantial reenactment of that of 1918." *Boone* v. *Lightner*, 319 U.S. 561, 565 (1943).

[12] The Court declined to toll the state-law redemption period for a service member whose mortgage had been foreclosed prior to the enactment of the SSCRA in 1918.

clude that the "care and particularity" with which the SSCRA is drawn leaves any greater room for implication of restrictions on relief that are nowhere in the text of the statute.

Indeed, there is even less basis for implying nonstatutory restrictions on relief, because the SSCRA must be liberally construed in favor of service members. See *Le Maistre* v. *Leffers*, 333 U.S. 1, 6 (1948). In *Le Maistre* this Court rejected a "technical reading" of Section 525 that would have limited the tolling of periods of redemption to cases in which a purchaser obtained title to forfeited land prior to the period of redemption. 333 U.S. at 4. The Court reasoned that Section 525's language "does not compel the narrow reading that is suggested," and that "the spirit of the amendment [covering redemption periods] repels any such restriction." *Ibid.* The Court added that "the Act must be read with an eye friendly to those who [have] dropped their affairs to answer their country's call." *Id.* at 6. Thus, even if the SSCRA were unclear regarding a requirement of prejudice under Section 525, any ambiguity would have to be resolved in favor of the service member. See *King* v. *St. Vincent's Hosp.*, 112 S. Ct. 570, 574 n.9 (1991) (reaffirming "canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor").[13]

b. Despite Section 525's plain language, the state court in this case held that a requirement of prejudice for a

[13] The state court in this case suggested that the pertinent canon applies only when an individual is called to temporary service during time of war, see Pet. App. 36, but *King* applied it in the case of a National Guard member who voluntarily assumed a three-year tour of active duty in peace time. 112 S. Ct. at 571-572. Although *King* arose under the Veterans' Reemployment Rights Act (VRRA), 38 U.S.C. 2021 *et seq.*, it articulated the canon in general terms that were not limited to that particular statute. Moreover, the decision upon which *King* relied in applying the canon, *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) (construing VRRA's predecessor statute), relied in turn upon *Boone* v. *Lightner*, 319 U.S. at 575, a case arising under the SSCRA.

career service member seeking to toll a period of redemption is necessary to avoid absurd results. Pet. App. 36-40. The court relied on several decisions concluding that Congress could not have intended the practical consequences of a contrary rule—namely, that a career service member could sow uncertainty in land titles by not paying real estate taxes, while retaining an unqualified right of redemption, during the entire period of his military service. See *Pannell* v. *Continental Can Co.*, 554 F.2d 216, 224-225 (5th Cir. 1977); *Bailey* v. *Barranca*, 488 P.2d 725, 729-730 (N.M. 1971); *King* v. *Zagorski*, 207 So. 2d 61, 67 (Fla. Dist. Ct. App. 1968). However, that essentially policy-based argument cannot overcome the plain meaning of the statute.

Indeed, the reasoning of *Pannell*, *Bailey*, and *Zagorski* is directly contrary to that of this Court's recent decision in *King* v. *St. Vincent's Hosp.*, *supra*. At issue in that case was a provision of the Veterans' Reemployment Rights Act (VRRA), 38 U.S.C. 2024(d), that requires employers to give reservists "a leave of absence" for training, and assures the returning employee "such seniority, status, pay, and vacation" as he would have had without the absence. The service member in *King* sought a three-year leave of absence, but his employer rejected it. Although the plain language of Section 2024(d) was unqualified in granting a right of leave, the court of appeals read a reasonableness requirement into the statute's guarantee of leave time; to do otherwise, the court held, would cause "absurd, unjust, or unintended" results. *St. Vincent's Hosp.* v. *King*, 901 F.2d 1068, 1071-1072 (11th Cir. 1990).

This Court reversed, reasoning that the language of Section 2024(d) is "unequivocal and unqualified" and "does not address the 'reasonableness' of a reservist's leave request." *King*, 112 S. Ct. at 573 (citations omitted). Although acknowledging the force of the argument that a literal reading of Section 2024(d) would create serious practical difficulties, the Court determined that "to grant

all this is not to find equivocation in the statute's silence, so as to render it susceptible to interpretive choice." 112 S. Ct. at 573. In particular, the Court observed that, unlike Section 2024(d), certain other provisions of the VRRA "expressly limit" the duration of reemployment rights. 112 S. Ct. at 573. In view of "the examples of affirmative limitations on reemployment benefits conferred by neighboring provisions," the Court inferred that "the simplicity of subsection (d) was deliberate, consistent with a plain meaning to provide its benefit without conditions on length of service." *Id.* at 574. Finally, the Court emphasized that even if there were ambiguity in the statute, it would have to be resolved in favor of the service member "under the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *Id.* at 574 n.9.

The same analysis applies to the redemption provision of Section 525. The language of that provision is "unequivocal and unambiguous"; it contains no requirement of prejudice; it is surrounded by other sections of the SSCRA that "expressly limit" available civil relief with "affirmative" requirements of prejudice; and it arises in the context of a statute that must be liberally construed in favor of the service member. Whatever policy concerns may arise from an unqualified tolling of the period of redemption during the period of a military service, the courts "must deal with the law as it is." *Monroe* v. *Standard Oil Co.*, 452 U.S. 549, 565 (1981).[14] By adding a requirement of prejudice to Section 525, the state court restruck the statutory balance in a manner inconsistent with the plain language selected by Congress in the SSCRA.[15]

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[14] This is especially so, moreover, under a statute governing the Nation's military affairs. Cf. *Rostker* v. *Goldberg*, 453 U.S. 57, 65-66 (1981) (noting the great deference owed to Congress in matters of national defense and military affairs).

[15] This Court has noted that "[l]egislative history is irrelevant to the interpretation of an unambiguous statute," *Davis* v. *Michigan Dep't of Treasury*, 489 U.S. 803, 808-809 n.3 (1989), and we are in any case unaware of anything in the legislative history that would contradict the plain meaning of the statute. To be sure, the legislative history accompanying the 1918 enactment of the SSCRA indicates that "[i]nstead of a rigid suspension of all actions against a soldier, a restriction upon suits is placed only where a court is satisfied that the absence of the defendant in military service has materially impaired his ability to meet that particular obligation." H.R. Rep. No. 181, 65th Cong., 1st Sess. 2 (1917). However, as discussed, where Congress intended to give effect to that principle in the legislation, it did so expressly. Congress did not do so with respect to the tolling provisions. The House sponsor of the 1918 bill, moreover, made clear that the SSCRA would "suspend entirely" the statute of limitations during the service member's period of service. 55 Cong. Rec. 7788 (1917) (Rep. Webb).

It is also true that the legislative history surrounding the SSCRA's 1940 reenactment reflects a primary purpose of addressing the urgent conditions that might arise if individuals were called to serve in the impending war. See, *e.g.*, *Bailey*, 488 P.2d at 728 (discussing legislative history). But "[i]t is not the law that a statute can have no effects which are not explicitly mentioned in its legislative history," *Pittston Coal Group* v. *Sebben*, 488 U.S. 105, 115 (1988); and Congress's indefinite extension of the SSCRA in 1948 leaves no doubt that the statute encompasses more than the protection of service members called to fight in a war. Finally, the legislative history of the 1942 amendment extending Section 525 to periods of redemption contains no suggestion of a prejudice requirement. See H.R. Rep. No. 2198, 77th Cong., 2d Sess. 3-4 (1942) ("The running of the statutory period during which real property may be redeemed after sale to enforce any obligation, tax, or assessment is likewise tolled during the part of such period [of military service] which occurs after the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942."); S. Rep. No. 1558, 77th Cong., 2d Sess. 4 (1942) (same).

2. There is a conflict among the circuits and state supreme courts concerning whether a showing of prejudice is required under 50 U.S.C. App. 525. The Fifth Circuit has held that the redemption provision of Section 525 "is inapplicable to a career service man" who "is not shown to have been handicapped by his military service from asserting any claim he had prior to the expiration of the

prescribed period." *Pannell* v. *Continental Can Co.*, 554 F.2d at 225. The New Mexico Supreme Court, moreover, has relied on practical considerations and the legislative history of SSCRA to hold that a "career" service member may not invoke Section 525 to extend a period of redemption, absent a showing of prejudice arising from military service. *Bailey* v. *Barranca*, 488 P.2d at 727-730.[16]

While we are unaware of any decision of a United States Court of Appeals or a state supreme court that has squarely held that a showing of prejudice is not required under the redemption provision of Section 525,[17] *Pannell* and *Bailey* cannot be reconciled with the numerous decisions holding that periods of limitaton may be tolled

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[16] With respect to the portion of Section 525 dealing with the period of limitations, the Alabama Supreme Court has also held that a "career" service member may not invoke Section 525 in a tort suit without a showing that the plaintiff's military service impaired his ability to file the action. *Crouch* v. *United Technologies Corp.*, 533 So. 2d 220, 221-223 (Ala. 1988); see *Smith* v. *Fitch*, 171 P.2d 682, 687-688 (Wash. 1946) (tolling provisions inapplicable because plaintiff "was in no way prejudiced by being in the military service").

[17] *Illinois Nat'l Bank* v. *Gwinn*, 61 N.E.2d 249 (Ill. 1945), applied Section 525 to toll the redemption period for a service member on active duty with the Navy during World War II. In so doing, the court observed:

> [Section 525] is not merely directory or permissive, but is imperatively controlling and automatically extends the period of time allowed for redemption in all cases coming within the application of its terms. It is evident that the provisions of [Section 525] * * *, as amended October 6, 1942, are self-executing, and that it was not the intention of Congress to make it discretionary with the court whether, under the facts of the particular case, an extension of time for redemption should be had.

61 N.E.2d at 254. Although *Gwinn* did not explicitly address the issue decided in *Pannell* and *Bailey*, those decisions would have come out differently under *Gwinn's* interpretation of the redemption provision.

under Section 525 without any showing of prejudice.[18] For example, in *Mason* v. *Texaco Inc.*, 862 F.2d at 244-245, the Tenth Circuit rejected the argument that a career military employee could not invoke Section 525 in a tort action without showing that his service disabled him from bringing suit. The court held that Section 525 is "clear and unambiguous," and that under "the plain meaning of the statute," the only condition upon tolling "is military service." 862 F.2d at 245. In so holding, the court of appeals expressly noted its disagreement with the Fifth Circuit's decision in *Pannell*. *Ibid.*

Similarly, in *Bickford* v. *United States*, 656 F.2d at 639, an action by a service member for back pay and allowances, the former Court of Claims rejected the government's contention that Section 525 requires proof that military service handicapped the service member's ability to bring suit.[19] The *Bickford* court explained:

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[18] The text of Section 525 is certainly no less unconditional with respect to periods of redemption. Section 525 excludes "[t]he period of military service" from any period of limitation, and also excludes "any part of such period [of military service] which occurs after October 6, 1942," from "any period" of redemption. Respondents therefore err in asserting, Br. in Opp. 4-5, that no conflict exists because the cases declining to require prejudice have thus far involved periods of limitation, and not periods of redemption.

[19] The Fourth Circuit, in an unpublished opinion, recently accepted the government's argument that Section 525 cannot be invoked without a showing of prejudice in an action to correct military records under 10 U.S.C. 1552. *Townsend* v. *Secretary of the Air Force*, No. 90-1168 (Nov. 12, 1991) (947 F.2d 942 (Table)). We note that the present case does not present the question whether Section 525 applies when Congress has provided a statute of limitations that explicitly governs the right of a service member or former service member to file suit. Cf. *Mouradian* v. *John Hancock Cos.*, 930 F.2d 972, 973-975 (1st Cir. 1991) (per curiam) (applying the specific military service tolling provision in the NLRA's statute of limitations, 10 U.S.C. 160(b), rather than applying general provisions of Section 525), cert. denied, 112 S. Ct. 1514 (1992). We also note that this case does not raise the issue whether a defense

> There is not ambiguity in the language of § 525 and no justification for the court to depart from the plain meaning of its words. The statute draws no distinction between the many different categories of active duty personnel. When Congress intended to impose conditions on the applicability of other provisions in the SSCRA * * *, it did so in clear terms. Section 525, in marked contrast, in no way suggests that a serviceman must demonstrate that his military service has affected his ability to bring suit as a condition precedent to its applicability.

656 F.2d at 639-640. The court expressly noted that it believed *Pannell* was "wrongly decided." *Id.* at 641 n.9. Other courts have also declined to condition relief under Section 525 upon a showing of prejudice. See, *e.g.*, *Ricard* v. *Birch*, 529 F.2d 214, 216-217 (4th Cir. 1975); *Ray* v. *Porter*, 464 F.2d 452, 454-455 (6th Cir. 1972); *Jones* v. *Garrett*, 386 P.2d 194, 200 (Kan. 1963).[20]

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of laches is available even if Section 525 precludes application of the statute of limitations.

We are advised by the Department of Defense that the House Committee on Veterans' Affairs is considering H.R. 4763, a bill "[t]o restate and clarify the Soldiers' and Sailors' Civil Relief Act of 1940." As presently drafted, H.R. 4763 would limit the applicability of the statute's tolling provisions with respect to claims against the United States, and would require, among other things, a showing of "material effect" for that class of claims. The committee has conducted hearings on H.R. 4763, but the bill has not been reported to the House.

[20] *Ricard*, *Ray*, and *Garrett* all involved suits *against* service members—which are also subject to the tolling rules of Section 525. Applying the unqualified terms of the statute, those cases held that a plaintiff may invoke Section 525 without showing that the defendant's military service impaired the plaintiff's ability to sue. See *Ricard*, 529 F.2d at 217 ("The tolling statute is unconditional. The only critical factor is military service; once that circumstance is shown, the period of limitations is automatically tolled for the duration of the service."); *Ray*, 464 F.2d at 456 ("[T]he [SSCRA] means exactly what it says, 'The period of military service shall not be included.'"); *Garrett*, 386 P.2d at 200 ("The

Although the present case resulted in an equal division of the Maine Supreme Court, it warrants further review. There has been a persistent conflict among the circuits and state supreme courts on the proper interpretation of Section 525. See *Oberlin* v. *United States*, 727 F. Supp. 946, 947 n.1 (E.D. Pa. 1989) (discussing conflict); *Syzemore* v. *County of Sacramento*, 55 Cal.App. 3d 517, 522-524 (Ct. App. 1976) (same). Moreover, Section 525 applies broadly to all service members, and the question whether prejudice is required is recurring. Finally, the issue presented, which turns on a straightforward application of the plain language of the SSCRA, has been thoroughly considered in a number of decisions, including the superior court's decision in this case. Thus, particularly in view of the fact that the SSCRA may well be invoked more frequently in the aftermath of Operation Desert Storm, the Court should grant certiorari in this case to resolve the conflict in authority on the requirements of Section 525.

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critical factor which brings section 525 of the act into play is that of military service. When that circumstance is shown, the period of limitation is automatically tolled during the duration of that service.").

For other decisions indicating that Section 525's tolling provisions are unqualified, see, *e.g.*, *Mouradian* v. *John Hancock Cos.*, 930 F.2d at 973 ("The SSCRA * * * tolls the limitations period during a litigant's active military service regardless of whether he or she actually is prevented from filing by reason of his or her service."); *Worlow* v. *Mississippi River Fuel Corp.*, 444 S.W.2d 461, 463-464 (Mo. 1969) ("A showing of prejudice to the person in military service is no part thereof [Section 525]; its provisions are mandatory and require a tolling of the statute of limitations during the period of military service.") (citation omitted).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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